

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4710 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR

Versus

HASMUKE MOTIBHAI HALANI

Appearance:

MR DD VYAS for Petitioner

MR BV LAKHIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/1999

ORAL JUDGEMENT

Mr. D.D.Vyas, the learned Sr. Advocate has appeared for the petitioner. Mr. B.V.Lakhia, the learned advocate has appeared for the respondent. The facts of the present petition are that the respondent was working as chowkidar with the petitioner since 27.3.1977. The service of the respondent came to be terminated on 27th April, 1984 by the petitioner. The respondent

workman has challenged the action of the petitioner by raising industrial dispute before the labour court, Rajkot by filing Reference. Before the labour Court, the respondent was examined vide Exh. 15. The petitioner was not appearing before the labour court, though, the written statement was filed by the petitioner before the labour court vide Exh. 4. As per the case of the petitioner, according to its written statement filed before the labour court, Rajkot, the respondent was engaged on temporary basis on daily payment of Rs. 5.00 and the workman was appointed on temporary basis on a condition that he may be relieved at any time without assigning any reason. The respondent was working as chowkidar but he was studying in LL.B. at Goldal Law College without prior permission of the petitioner and that the respondent was attending the college during his duty period and, therefore, it was contended by the petitioner before the labour court that the petitioner is not entitled to any relief as prayed for. The petitioner has not led any evidence, either oral or documentary, before the labour court. The labour court, after appreciation of the evidence brought before it, came to the conclusion that the action of termination is illegal and directed the petitioner to reinstate the respondent in service on his original post with continuity of service. The petitioner has challenged the said order of the labour court by filing this petition before this court. While admitting this petition, this Court has granted ad interim stay of the operation of the award.

I have heard the learned advocates for the parties. It was pointed out by the learned advocate appearing for the petitioner that now, the respondent workman has become an Advocate and has obtained Sanad No. G.135.1986 dated 23rd September, 1986 and he is now practising as an advocate from 1986. He has also produced letter dated 7th October, 1989 issued by the Bar Council of Gujarat and the said letter has been shown to the learned advocate for the respondent Mr. B.V.Lakhia. Learned advocate for the petitioner has also produced his letter dated 1st June, 1989 issued by the Law College, Gondal addressed to the petitioner that the respondent workman was studying in the Ist LL.B. in the year 1981-82 and has also attended the Law College in the year 1983-84 and time of law College was from evening 6.00 p.m. to 9 p.m. In view of these facts, since the respondent has obtained Sanad from the Bar Council and is now practicing advocate, therefore, now, there is no question of reinstatement of the respondent as per the award passed by the labour court and as a matter of fact, the respondent has not come forward for reinstatement as

ordered by the labour Court. Now, the only question remains is about the back wages for the broken period as ordered by the labour court. It is pertinent to note that the said broken period has not been certified and calculated by the labour court while passing the award.

I have perused the award passed by the labour court. The labour Court has, after considering the evidence produced by the respondent, passed the award. No evidence was produced by the petitioner before the labour court. Therefore, in absence of the evidence of the petitioner, the labour court has believed the say of the respondent by setting aside the order of termination and granted reinstatement and wages for broken period. The learned advocate for the petitioner has not been able to point out any infirmity or irregularity in the award passed by the labour court. Therefore, I do not see any reason to interfere with the award passed by the labour court, in exercise of the powers under Article 226 and/or 227 of the Constitution of India. Therefore, in the result, the petition is dismissed. Rule is discharged. There shall be no order as to costs. Ad interim relief, if any, granted earlier shall stand vacated.

1.10.1999. (H.K.Rathod,J.)

Vyas